

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

JOHNNIE L. LEWIS,

Plaintiff,

v.

CIVIL ACTION NO. 2:06CV54

JO ANNE B. BARNHART, COMMISSIONER OF  
SOCIAL SECURITY,

Defendant.

**REPORT AND RECOMMENDATION/OPINION**

**FACTS**

On May 25, 2006, the plaintiff, Johnnie L. Lewis, by Randall W. Galford, his attorney, filed a Complaint in this matter [Docket Entry 1]. On June 8, 2006, United States District Judge Robert E. Maxwell granted Plaintiff's Motion for Leave to Proceed *in Forma Pauperis*. On September 11, 2006, Defendant filed her Answer to the Complaint, and a copy of the Transcript of the Administrative Proceedings in this matter.

On September 14, 2006, United States District Judge Robert E. Maxwell entered an Order referring the case to the undersigned United States Magistrate Judge and directing the parties to file their motions for summary judgment in accordance with the deadlines established by Local Rule of Civil Procedure 83.12, which provides:

Within thirty days after the defendant has filed an answer and a complete copy of the administrative record, the plaintiff shall file a brief in support of his or her claim(s) for relief. The plaintiff shall serve copies of his or her brief upon the United States Attorney's Office.

Plaintiff's Motion for Summary Judgment was therefore due on or before October 18, 2006, at the latest. Plaintiff did not file his Motion for Summary Judgment and brief in support thereof as of November 17, 2006. On November 17, 2006, the undersigned United States Magistrate Judge **ORDERED** Plaintiff to show good cause in writing, if he could, why he failed to timely file his Motion for Summary Judgment and brief in support thereof in accord with the Court's order of September 14, 2006. The Order expressly informed Plaintiff that failure to show good cause would result in the undersigned recommending to the District Judge that this case be dismissed for failure to prosecute the same.

A review of the docket as of this date reveals that Plaintiff has not filed his Motion for Summary Judgment, nor has he complied with the Court's order of November 17, 2006, that he show cause for his failure to do so.

#### **RECOMMENDATION**

For the above reasons, the undersigned respectfully **RECOMMENDS** that the plaintiff's Complaint (Docket No. 1) be **DISMISSED WITH PREJUDICE** for failure to prosecute and for failure to comply with the Court's Orders of September 14, 2006, and November 17, 2006.

Any party may, within ten (10) days after being served with a copy of this Report and Recommendation, file with the Clerk of the Court written objections identifying the portions of the Report and Recommendation to which objection is made, and the basis for such objection. A copy of such objections should also be submitted to the Honorable Robert E. Maxwell, United States District Judge. Failure to timely file objections to the Report and Recommendation set forth above will result in waiver of the right to appeal from a judgment of this Court based upon such Report and Recommendation. 28 U.S.C. § 636(b)(1); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); Thomas v. Arn,

474 U.S. 140 (1985).

The Clerk of the Court is directed to send a copy of this Report and Recommendation to counsel of record.

DATED: December 28, 2006.

/s *John S. Kaull*

JOHN S. KAULL

UNITED STATES MAGISTRATE JUDGE